THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No.5678 of 2007

23-03-2007

Between:-

Sree Sanjay Agro Traders (P) Ltd.,
FF-1, Vyshnavi Apartments,
Chandramoulinagar, Guntur
Represented by its Managing Director,
Mr. M. Ramesh Babu and two others.

Petitioners

And

UCO Bank,
9/1 Arundelpet,
Guntur, rep., by Assistant General Manager.

Respondents

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Oral order:

The first petitioner obtained a loan from the respondent-bank and defaulted in the repayment of the principal and installments in terms of the loan agreement. Thereafter proceedings were initiated under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Act No. 54 of 2002) (for short 'the Act') by the issuance of a notice under Section 13 (2) of the Act. At the request of the first petitioner, the respondent-bank granted the benefit of 'One Time Settlement' (for short 'OTS') for settlement of the liability of the first petitioner to which the petitioners No. 2 and 3 stood as guarantors. Under the terms of settlement, Rs.3.75 crores is the amount arrived

at towards full and final settlement of dues of which Rs.91,25,000-00 should have been deposited on or before 31-03-2006 and the balance amount of Rs.2,73,75,000-00 was payable in four quarterly installments of Rs.68,43,750-00 each commencing from April-June quarter, 2006. The terms of OTS were subject to conditions appended to the Settlement Notification dated 24-03-2006. Clause 8 stipulated that in the event of the first petitioner failing to comply with any of the terms and conditions of the settlement scheme, the Bank's approval to the settlement scheme shall stand cancelled without any further notice. Clause 3 stipulates that without prejudice to Clause 8 or otherwise, such defaults shall carry as and by way of liquidated damages at the rate of 2% at quarterly rests over and above the BPLR of the Banks, as may be prevailing at the time of such default, for the period of such default.

As the first petitioner had defaulted in complying with the terms and conditions of the OTS dated 24-03-2006 (he states to have paid an amount of Rs.1.73 crores as against Rs.3.75 crorers) the first petitioner apprehends and rightly that further proceedings under the provisions of the Act will be initiated. Already constructive possession of the property was taken under Section 13 (4) of the Act and the next step would be a notification for sale of the secured asset.

The petitioners contend that Clause 3 entitles the

petitioners to pay liquidated damages and that the right of the respondent-bank to treat the settlement scheme as rescinded without further notice, cannot prevail in view of the provisions of Clause 3. This interpretation is misconceived. Clause 8 is self-executing. On the occurrence of a default by the first petitioner in complying with the terms and conditions of the Settlement Scheme, the bank's approval to the Settlement Scheme stands cancelled. Clause 8 in terms does not state that the Bank has the discretion to treat the settlement scheme as cancelled. What all Clause 3 provides is that notwithstanding the cancellation of the Settlement Scheme in respect of such default, the first petitioner shall be liable to liquidated damages at the rates and on terms stipulated in Clause 3. In any event, whether the OTS should be treated as rescinded in view of the admitted default committed by the first petitioner in complying with the terms of OTS, is a matter primarily within the discretion of the respondent-bank. No mandamus can be issued to the respondent-bank to re-vitalise the OTS. The Bank has an entitlement fortified by the legislative mandate to pursue remedies under the provisions of the Act. Such lawfully available legal remedy cannot be interdicted by the exercise of jurisdiction under Article 226 of the Constitution. It is always open to the respondent-bank to consider any representation, including the one dated 17-03-2007 submitted by the petitioner according to its

discretion. There are no merits in the writ petition. The writ petition is accordingly dismissed. No costs.

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GODA RAGHURAM, J

Dated:23-03-2007
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